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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,002	05/14/2001	Franz-Josef Carduck	D 8927B-OC/FOHPT	1201

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EXAMINER

CHAMBERS, A MICHAEL

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 03/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/855,002

Applicant(s)

Carduck et al

Examiner

A. Michael Chambers

Art Unit

3753



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 15, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-30 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 3753

DETAILED ACTION

1. This action is in response to an amendment filed January 15, 2003 and is further in response to a preliminary amendment filed May 5, 2001. Claim 23 has been amended to include changes such as: "said inlet" to ...an... and "the drainage pipe" to ...a... This application is a continuation of serial number 09/277,399, filed March 26, 1999, now abandoned which is a continuation of serial number 08/674,698 filed July 9, 1996, now abandoned.. Applicants were asked to update the specification and have done so in this amendment. Claims 18-30 have been added and claim 15 has been canceled by the preliminary amendment. Claims 1-14, and 16-30 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 18, 20, 22 rejected under 35 U.S.C. 102(b) as being anticipated by Hehl as cited in the previous Office action. Contrary to applicants' remarks, the fluid system of Hehl does "distribute liquid" and is clearly analogous. Fluid clearly drains from any of the plurality of drainage pipes 22, 12 and 13 . Nozzle 2 which is fluid communication with pipes 13 includes a

Art Unit: 3753

tapered portion. Reading connector 2 as a portion of the distributor, the inlet opening adjacent “b” extends “...upward from the bottom...”.

4. Claims 23-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohlswager et al as cited in the previous Office action.. Note the hood 16. Plate means 16 is readable on “dome” recitation (claim 29). Clearly “plate means” 16 does cover the inlet opening to “pipe means’ 12. See Figure 1 An annular inner wall 17 is shown(claim 28). Contrary to applicants’ remarks claim 29 does include “tapering drainage pipe” recitation. The base of “plate means” 16 clearly extends over the drainage pipes 12.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

Art Unit: 3753

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

8. Claims 1-14 and 16-17, 19, 21 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plachy in view of Dear et al(4,479,509; Figures 1 and 2) as cited in the previous Office action. Note the tapered portion 11 of “drainage pipes” 13-16 of Plachy . No patentable weight has been given to the recitation added by this amendment of the “...nozzle is comprised of a material resistant to the adherence of solids....”. All nozzles, due their design of a tapered smooth cross-section, cause increased fluid velocity and reduced “caking” of material. The inner wall of the nozzle portion of the distributor of Plachy is readable on such “caking prevention” recitation. Both the shape and the selection of a smooth inner surface of the portion 11 of the distributor prevents such caking as is disclosed by the specification of the instant application and shown by the patent to Plachy. Plachy et al disclose the claimed invention except for the recitation of “...the inner wall of the nozzle is comprised of a material resistance to the

Art Unit: 3753

adherence of solids..." as taught by Dear et al. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a drainage pipe 2 of Plachy et al to be lined as taught by 16 of Dear et al in order to provide a more efficient transition of the fluid flow through the drain pipe. With regard to claim 30, note the sleeve 36 of Figure 1 of Dear et al. By definition a weir may be defined as a 'vertical plate with a notch' through which fluid flows and not necessarily the narrower definition given by applicants in their response. A weir is clearly shown in figure 1 of Plachy. No 'hindsight use' is intended in the rejection. The patent to Dear et al is applied as a teaching of lining of the inner wall of a nozzle to make it resistant to the adherence of solids to provide more efficient transition of fluid flow.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication communications from the Examiner should be directed to A. Michael Chambers whose telephone number is (703) 308-1016 (FAX (703) 308-7765).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 3753

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

amc

March 6, 2003



**A. MICHAEL CHAMBERS
PRIMARY EXAMINER
ART UNIT 3753**